

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Fairpoint Communications, Inc.)	WC Docket No. 10-90
Petition For Waiver Of Certain)	
High-Cost Universal Service Rules)	WC Docket No. 05-337

REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation (“U.S. Cellular”), by counsel and pursuant to the Commission’s Public Notice,¹ hereby files these reply comments in opposition to the petition for waiver filed by Fairpoint Communications, Inc. (“Fairpoint”) on September 10, 2012. Fairpoint’s petition rehashes wireline carrier advocacy in the CAF rulemaking proceeding, presenting nothing to warrant a change to the Commission’s decision to limit support to \$775 per location.²

Rather than granting relief to Fairpoint, spending \$2.8 million in scarce universal service funding to provide service to only 697 additional locations (at a cost of approximately \$4000 *per location*), the Commission should quickly reallocate support to the Mobility Fund, in order to speed deployment of broadband service to rural consumers in an efficient manner and at the earliest possible date. In support of this request, the following is respectfully shown:

¹ Wireline Competition Bureau Seeks Comment On Fairpoint Communications Petition For Waiver Of Certain High-Cost Universal Service Rules, Public Notice, DA 12-1473 (September 11, 2012).

² See also, Comments of American Cable Association (suggesting that Fairpoint provides no reason to overturn the CAF Order’s decision to limit support to \$775 per location.)

I. Background

The Commission adopted CAF Phase I, a mechanism designed and proposed by price cap carriers, to “immediately start to accelerate broadband deployment to unserved areas across America.”³ In addition to support provided to price cap carriers under the legacy mechanism, the Commission allocated an additional \$300 million in “incremental” support under CAF Phase I to price cap carriers willing to commit to rapidly deploy broadband to consumers living in areas identified as lacking broadband service at the earliest possible date.⁴

Funding for CAF Phase I was provided pursuant to Commission directive to USAC to reallocate unused funds that had been made available by Verizon Wireless and Sprint voluntarily phasing down their legacy high-cost support.⁵ The entire purpose of reallocating funds previously being invested by wireless carriers was to provide an “immediate boost to broadband deployment in areas that are unserved by any broadband provider.”⁶ The Commission reserved the right to reallocate declined CAF Phase I support as necessary to advance its broadband objectives.⁷

On July 25, 2012, the Commission announced that Price Cap carriers accepted only \$115 million out of \$300 million allocated to them in CAF Phase I.⁸ That is, Price Cap carriers collectively declined \$185 million in Phase I support. Some refused all of the support tendered

³ See, Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) at para. 132 (“CAF Order”).

⁴ Id.

⁵ Id., at paras. 564-7.

⁶ Id., at para. 137.

⁷ Id., at para. 138.

⁸ See, FCC, FCC Kicks-Off ‘Connect America Fund’ with Major Announcement: Nearly 400,000 Unserved Americans from Rural Communities in 37 States Will Gain Access to High-Speed Internet Within Three Years (July 25, 2012) http://thefccoffice.com/late_releases_files/07-25-2012/DOC-315413A1.pdf.

by the Commission (e.g., AT&T and Verizon), while others filed waiver requests seeking relief that would allow them to overbuild unsubsidized carriers (e.g., CenturyLink) or draw many times the amount allocated per service location (e.g., Fairpoint).

In its election, Fairpoint accepted \$2,025,075 of the \$4,856,858 that the FCC allocated to them in CAF Phase I. Fairpoint rejected the remaining \$2,831,783.⁹

In its petition, Fairpoint seeks waiver of the \$775 per location requirement, and authority to construct facilities that would potentially serve an additional 697 locations in Maine, or \$4,062.81 per location ($\$2,831,783 \div 697 = \$4,062.81$).¹⁰

II. The Commission Must Not Expend Six Times the \$775 Limit Unless it is Proven to be Necessary.

Even if the Commission accepts all of Fairpoint's assertions, that the cost of constructing broadband to these 697 locations in Maine is six times the \$775 threshold set in the CAF Order, there is no public policy reason to grant a waiver to Fairpoint without a much more thorough evaluation. Fairpoint's claim that it simply costs more to provide services in this area may be true for Fairpoint, but in order for the FCC to justify spending over \$4,000 per location, it must determine whether that cost holds true for all carriers.¹¹ The Commission must invite other carriers, including CLECs, cable companies, and wireless companies, to provide service in these areas for a lower cost. If another carrier can provide service for less, then Fairpoint's petition should be rejected.

⁹ See, Fairpoint Election, WC Docket Nos. 10-90 and 05-337, filed July 24, 2012 ("Fairpoint Election") at <http://apps.fcc.gov/ecfs/document/view?id=7021991816>.

¹⁰ Fairpoint Waiver Request at p. 11.

¹¹ See, WISPA Comments at pp. 6-7.

Fairpoint is incorrect in stating that a grant of its request “would result in no harm to anyone.”¹² As Fairpoint knows full well, consumers who pay into the fund are harmed when support is wasted. Awarding \$4,000 of support per location without first determining that such expenditure is efficient must be a non-starter for the Commission. ITTA’s comment that without a waiver Fairpoint will be unable to use the funds completely ignores that the funds are for our citizens’ benefit, not any individual carrier.¹³ If the area Fairpoint serves really costs \$4,000 per location to bring 4/1 service, then the Commission should find another place for these funds and consider whether this area is better served by a lower-cost technology. Without a thorough analysis, there is no way to assure the public that it is receiving an appropriate value in exchange for its contributions.

Looking at Auction 901, Maine had 88 Census Tracts available for bid, areas that had service that is less than 3G in quality. U.S. Cellular was the only bidder in Maine and it won only three Census Tracts. The other 85 tracts remain unserved or underserved. Adding another \$2.8 million in funding for mobile broadband would not serve all 85 tracts, but it would make a difference. It is highly likely that an investment of \$2.8 million, which could deliver approximately seven new cell sites providing 4G LTE service (or more LTE sites in an overlay scenario) would provide high-quality broadband to far more than the 697 Maine households proposed by Fairpoint.

¹² See Fairpoint’s Petition at p. 18.

¹³ ITTA Comments at p.4.

III. The Commission Should Await Resolution of the Maine Litigation Before Making Any Commitments to Fairpoint.

Fairpoint asks the FCC to grant its petition pending the outcome of litigation in Maine concerning whether it has fulfilled certain broadband buildout commitments it made to the Maine Public Utilities Commission (“MPUC”).¹⁴ In fact, Fairpoint has it backward. This Commission should expend no energy to conditionally award support to a company that may later be adjudicated to have failed to meet broadband buildout commitments in Maine.¹⁵

Instead, the Commission should be finding ways to immediately accelerate broadband to rural Americans by investing the available \$2.8 million as quickly and efficiently as possible. There is no public interest or other valid policy reason why the FCC should park these funds for months, or even years, while Fairpoint litigates with the MPUC.

In sum, unless it can be demonstrated that an investment at the level requested by Fairpoint is the best way to spend CAF support, Fairpoint’s petition must be denied.

IV. The Commission Should Immediately Reallocate All of the Declined Funding to Mobile Broadband.

The fastest most economical way to accelerate broadband deployment in rural America is to simply shift the funds rejected by all of the Price Cap carriers into the Mobility Fund. Now that it has completed one auction, the Commission can easily set up a supplemental Phase I auction that has in it over \$180 million. The Commission should consider requiring 4G service for the supplemental auction to accelerate broadband deployment in rural areas.

¹⁴ See Fairpoint’s Petition at footnotes 9-11.

¹⁵ U.S. Cellular concurs with WISPA that Fairpoint’s petition to waive the election date fails to demonstrate why it could not have made a timely election.

There is no point in funding over \$4,000 per location served, as proposed by Fairpoint. Carriers deploying 4G service using LTE or HSPA+ will immediately deliver broadband speeds well in excess of the Commission's 4Mb/768kb standard, and such deployments will be capable of much higher speeds in the years to come. These advanced networks will have enormous impact in our nation's rural areas.

According to the Pew Research Center, young adults, minorities, those with no college experience and those with lower household income levels who own smartphones are most likely to say that their phone is their main source of Internet access. One third of these adults do not have a traditional high-speed broadband connection at home.¹⁶

U.S. Cellular does not seek to relitigate here decisions made by the Commission to wall off a disproportionate amount of support to wireline carriers. What it does seek is for the Commission to now allocate funds, otherwise lying fallow, to carriers who are willing to step forward and provide service at the earliest possible date. Moreover, reallocating funding to mobile broadband will begin to move overall CAF funding in the proper direction – toward the broadband services that rural consumers overwhelmingly prefer, and need.

V. Conclusion

U.S. Cellular respectfully requests the Commission to reject Fairpoint's waiver request and to immediately redeploy all declined CAF Phase I support to mobile broadband so that

¹⁶ See, Digital Differences, Pew Internet and American Life Project, April 13, 2012, at p. 19. http://pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf

carriers willing to deploy broadband infrastructure in rural America can do so at the earliest possible date.

Respectfully submitted,

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